

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

NAPOLEON GRAY,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

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No. 5:22-cv-00252-MTT-MSH

ORDER OF DISMISSAL

Petitioner Napoleon Gray filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Pet. for Writ of Habeas Corpus, ECF No. 1. Petitioner also paid the \$5.00 filing fee for his petition. In the petition, Petitioner indicated that he had been released and made assertions that suggested that the charges against him had been dismissed. *See id.* This raised the question of whether Petitioner was “in custody” for the purposes of filing a habeas corpus petition. Additionally, Petitioner had another case pending in this Court, *Gray v. Georgia*, Case No. 5:22-cv-00217-MTT-CHW, which raised the question of whether this petition was duplicative of the previously filed petition. Finally, even assuming that this case was properly brought here, pages seemed to be missing from the petition, Petitioner’s claims in the petition were difficult to understand, and Petitioner may have been seeking relief that was not available in a habeas corpus proceeding.

Under these circumstances, Petitioner was ordered to show cause to the Court why this case should not be dismissed. Order to Show Cause, ECF No. 4. In particular, Petitioner was ordered to address whether he was in custody for the purpose of a habeas corpus proceeding, whether this case was duplicative of his other pending action, and whether he was seeking relief available in a habeas corpus petition. *Id.* Petitioner was

given fourteen days to respond and was cautioned that his failure to do so would result in the dismissal of this action. *Id.*

More than fourteen days have passed since the order to show cause was entered, and Petitioner has not responded to that order. Thus, because Petitioner has failed to respond to the Court's orders and has otherwise failed to prosecute this case, it is hereby **ORDERED** that this petition be **DISMISSED WITHOUT PREJUDICE**. *See* Fed. R. Civ. P. 41(b); *Brown v. Tallahassee Police Dep't*, 205 F. App'x 802, 802 (11th Cir. 2006) (per curiam) ("The court may dismiss an action *sua sponte* under Rule 41(b) for failure to prosecute or failure to obey a court order.") (citing Fed. R. Civ. P. 41(b) and *Lopez v. Aransas Cty. Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978)).

SO ORDERED, this 12th day of October, 2022.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT